



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

March 26, 2003

MEMORANDUM FOR U.S. ARMY MILITARY DISTRICT OF WASHINGTON

SUBJECT: Exemption Request

Reference memorandum, Military District of Washington (MDW), (ANCG), 15 January 2003, subject: U.S. Army Military District of Washington (MDW) Third Wave Comments and Requests.

Function. This request includes military and civilian employees serving under the command of the Military District of Washington.

Decision. With the exception of operational contingencies in MDW's area of responsibility (AOR), including the guarding of Site R, MDW functions are not Army core competencies. Some aspects of the MDW functions are required by Title 10, U.S. Code, Sections 3013 and 3032, insofar as they provided administration and servicing support to the Secretary of the Army and/or the Army Chief of Staff and therefore cannot be privatized or divested without specific enabling legislation. All positions directly participating and supporting national and international ceremonies and special events that MDW conducts are exempt from review for private sector performance on the basis of esprit de corps and the zero-defects standard required of these functions. Implementation plans should seek to maintain current coding of positions (exempt/non-exempt) where evolving operational contingencies and NCR exigencies permit. All 12th Army Aviation Battalion positions are exempt under the personal security exemption of the military police decision. The 212th and 241st MP Detachments are also covered by the military police decision. This is the only aspect of the MDW mission that was not previously exempted.

At enclosure are instructions on how to implement this decision in the Inventory of Commercial and Inherently Governmental Activities (including the Federal Activities Inventory Reform Act Inventory), to be developed by Deputy Chief of Staff (DCS), G-1 in coordination with our responsible staff officers. This determination does not change the current mix of exempt and non-exempt positions in the database, with the exception of the Aviation and MP functions described above.

Requestor's Position on Issues. The functions that are addressed in this exemption request consist of a variety of MDW-level activities. The U.S. Army Military District of Washington supports the majority of the coding of MDW positions, as they currently exist, however there are concerns. MDW fights in its AOR, which encompasses the surrounding states and the District of Columbia, and includes numerous local, state,

district, and federal law enforcement and emergency preparedness agencies. The establishment of Northern Command (NORTHCOM) for homeland security along with the existence of MDW, with a dedicated response capability and developed contingency plans, provides NORTHCOM a unique and potential Joint Task Force capable of responding to a crisis in the NCR. Discussions are currently underway to determine MDW's long-term role in homeland security. Regarding Site R, MDW supports the conversion of active component military to National Guard for the ongoing protection of this facility and the ongoing civil authority protection this provides in the event of an attack aimed at our national command authority. Finally, while the non-flying support positions assigned to the 12th Aviation Battalion (which operates all Army helicopters in the NCR) could be privatized, MDW recommends careful consideration, as Army leadership is the primary customer. Finally, MDW has requested that the augmentation TDA military positions assigned to the 212th and 241st MP Detachments be made consistent with the majority of the positions that are MTOE.

Standard of review. The senior HQDA functional official for a function must describe and substantiate specifically how preparation and implementation of a Third Wave implementation plan for each course of action poses substantial and specific risks to a core war-fighting mission of the Army (i.e., a core competency) or violates a statutory requirement affecting a function. The following are risk factors to evaluate this request: force management risk; operational risk; future challenges; and institutional risk. How these risk criteria are applied may vary based on each course of action evaluated (i.e., A-76; alternatives to A-76; military conversions; transfer to another agency; divestiture). Therefore, exemption requests and decisions must assess the potentially adverse impact of each course of action.

Core Competency Relevant to Risk Issue. Aspects of the MDW functions support at least three of the core competencies—'Shape the Security Environment,' 'Prompt Response,' and 'Support Civil Authority'—of the six recognized core competencies of the Army, as provided for in Army Field Manual 1 and The Army Plan: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. Therefore, the risk criteria pertaining to the impact of an implementation plan or sourcing decision as it affects the Army's war fighting competencies are directly relevant to most MDW functions.

Statutory Requirements Relevant to Risk Issue. Title 10, U.S. Code, Section 3013, provides that the Secretary of the Army is responsible for the functions of mobilizing the Army, administering (including the morale and welfare of personnel), and the construction, maintenance, and repair of buildings and structures. Title 10, U.S. Code, Section 3032 gives similar responsibilities to the Chief of Staff Army. Therefore,

these functions can not be divested, transferred or privatized absent specific enabling legislation.

Inherently Governmental Determination Relevant to Outsourcing Issue. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments while making decisions for the Government. An inherently Governmental function is so intimately related to the public interest as to require performance by Federal Government employees. This concept does not include providing advice to Federal Government officials. The exercise of discretion in making a decision must be substantial in nature in order for the decision to involve an inherently Governmental function. Based on the record, it appears that only the command and control function in MDW is inherently Governmental.

Statutes Relevant to Sourcing Decision. MDW functions are subject to the normal process provided by Section 2461, Title 10 and Section 8014 of appropriations acts mandating public-private competition in certain circumstances, subject to the standard exceptions for 10 or fewer civilian employees, and preferential procurement programs.

Personal Services. Insofar as few MDW positions are inherently Governmental, the issue of a potential personal services arrangement arising from supervision by an official making inherently Governmental decisions is not relevant.

Conflicts of Interest. No conflict of interest issues have been substantiated in the referenced exemption requests.

Military conversions. Insofar as MDW supports core war-fighting competencies, the basis for arguing for military performance in the infrastructure is substantial. The central issue (according to the Inventory Guide, Enclosure 6, page 6-9) is whether adequate performance of the function in the infrastructure requires military unique knowledge and experience that can only be derived from *recent* first-hand involvement in military activities – i.e., through commanding military forces or conducting or participating in military operations or exercises. This knowledge and experience must be more substantial than familiarity with doctrine, tactics, operations, or regulations; capabilities that can be developed by civilians; or, advice military retirees can provide based on their knowledge and experiences.

MDW has an evolving operational role in homeland defense making military performance of current military-assigned functions advisable.

A handwritten signature in black ink, reading "Reginald J. Brown". The signature is fluid and cursive, with the first name "Reginald" being more prominent and the last name "Brown" following in a similar style.

Reginald J. Brown
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosures

CODING RULES for Military District of Washington

1. Military in units with Ceremonial and Esprit Missions, and Contingency Missions
 - a. Whitehouse Transportation Agency (W2D5AA) Code G – Esprit de Corps and Military Support
 - b. 1BN 3ID “Old Guard” Augmentation (WA4A99) Code G – Esprit de Corps and Military Support
 - c. 12th Aviation BN (W0Y4AA) Code F – Military Unique Skills and Knowledge
 - d. MDW Engineer CO (W40RAAA) Code F – Military Unique Skills and Knowledge
 - e. HISA CCP (W3J8AA) Code F – Military Unique Skills and Knowledge

2. Civilian in units with Ceremonial and Esprit Missions, and Contingency Missions
 - a. 12th Aviation BN (W0Y4AA) Code G – Esprit de Corps and Military Support
 - b. 1BN 3ID “Old Guard” Augmentation (WA4A99) Code G – Esprit de Corps and Military Support

3. Personnel in Ceremonies and Special Events Office of HQ MDW
 - a. Military and civilian Code G – Esprit de Corps and Military Support

4. NORTHCOM Liaison in HQ MDW
 - a. Military and civilian (4 positions) Code P – Pending Restructuring

5. Military in special security mission
 - a. Raven Rock Security (FT Detrick) (W1G3AA) Code M – DoD Management Decision
 - b. Raven Rock (W6DBAA) Code P – Pending Restructuring